

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 382

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING ELECTRONIC RECORDING OF
CUSTODIAL INTERROGATIONS; ESTABLISHING PROCEDURES FOR
ELECTRONIC RECORDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ELECTRONIC RECORDINGS OF CUSTODIAL
INTERROGATIONS.--

A. A state or local law enforcement officer shall
comply when reasonably able to do so with the following
procedures when conducting a custodial interrogation:

(1) the custodial interrogation shall be
electronically recorded in its entirety;

(2) if conducted in a police station, the
custodial interrogation shall be electronically recorded by a
method that includes audio or visual or both, if available; and

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underscored material = new
[bracketed material] = delete

1 (3) the electronic recording shall include the
2 advice of constitutional rights required by law.

3 B. A law enforcement officer shall comply with the
4 provisions of this section unless the law enforcement officer
5 has good cause not to electronically record the entire
6 custodial interrogation and makes a contemporaneous written or
7 electronic record of the reasons for not doing so. Good cause
8 includes:

9 (1) the electronic recording equipment was not
10 reasonably available;

11 (2) the electronic recording equipment failed
12 and obtaining replacement equipment was not feasible;

13 (3) the individual refused to be recorded; or

14 (4) the statement was made in a court
15 proceeding or a grand jury proceeding.

16 C. Statements that are spontaneously volunteered
17 and not the result of custodial interrogation are not subject
18 to the provisions of this section.

19 D. The provisions of this section shall apply only
20 to custodial interrogations when, at the time of the
21 interrogation, the person is suspected of committing a felony
22 offense.

23 E. The provisions of this section do not apply to
24 custodial interrogations conducted outside the state of New
25 Mexico.

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1 F. The provisions of this section do not apply to
2 statements used for impeachment purposes.

3 G. The provisions of this section do not apply
4 within a correctional facility.

5 H. As used in this section:

6 (1) "custodial interrogation" means
7 questioning by law enforcement officers that requires the
8 advice of constitutional rights; and

9 (2) "electronic recording" means a complete
10 and authentic electronic recording created by visual or audio
11 media, including by motion picture, videotape, audio tape or
12 digital media.

13 I. This section does not intrude upon the authority
14 of the New Mexico courts to determine admissibility of
15 evidence.

16 Section 2. EFFECTIVE DATE.-- The effective date of the
17 provisions of this act is January 1, 2006.